

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2243 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANAGER

Versus

DISTRICT SUPPLY OFFICER

Appearance:

MR RC JANI for Petitioner

MR GHARANIA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/09/98

ORAL JUDGEMENT

Heard the ld. counsel appearing for the respective parties. Considering the facts and circumstances of the case, petition requires to be admitted. Hence, Rule. Ld. AGP Mr.Gharania waives service of Rule on behalf of all the respondents. With the consent of the ld. counsel appearing for the parties, this petition is taken up for final hearing today.

Mr. Jani, ld. counsel appearing for the petitioner has taken this Court through the entire dispute between the petitioner - Gujarat Ambuja Protein Ltd. and the State machinery of Civil Supply Department.

According to Mr. Jani, each and every allegation made in the SCN have been properly explained. Even then, the Collector has confiscated 30% of disputed goods. According to Mr. Jani, this confiscation, if the order is read in proper perspective, can be said to be an imposition of penalty. Minor or technical irregularities ought to have been pardoned. The petitioner company is a Ltd. Company and every transaction is being reflected on the record. Sometimes, inefficiency of the staff on duty also puts the company in difficulty. During the course of visit, goods worth Rs. 8,33,232 / were seized. Goods are in four categories and all these four categories are of edible oils of various quality and, therefore, according to Mr. Jani, respondents should be directed to reconsider the entire case of the petitioner de novo and it should be held that the orders passed by the respondent nos. 2 & 3 are erroneous, illegal and against the principles of natural justice. Mr. Jani has also drawn attention of this Court and has submitted that during the inquiry, all relevant documents were not supplied to the petitioner. By relying on one judgment of this court in the case of Kiran Industries, reported in 1996(2) GLR 127, it is submitted that it is obligatory on the part of the State machinery to supply all relevant documents on which the State intends to place reliance. Mr. Jani has pointed out that in one case wherein same irregularities were found by a checking squad in respect of very same company, the competent authority imposed confiscation of goods to the extent of 20%. In the next visit within a couple of months, when the company was trying to improve by meeting with the norms, confiscation

is ordered to the extent of 30% which can be said to be unreasonable. Increase of 10% in confiscation results into increase of amount in thousands of rupees. According to Mr. Jani, therefore, the officer concerned has acted in an arbitrary manner. According to Mr. Jani, such an approach can be said to be discouraging approach. Civil Supplies Authorities should guide the licence-holders in a proper manner to minimise the nature of small or technical irregularities.

Mr. Jani has alternatively submitted that if the confiscation of goods to the extent of 30% ordered by the authorities concerned is reduced to 20%, then he may not press for the grounds taken in the petition and argued by

him.

Ld. AGP Mr.Gharania appearing for the State has submitted that the State has no objection if the petitioner forgives all the grounds and accepts irregularities mentioned in the SCN served to the petitioner company and though the discretion is with this court to reduce percentage of confiscated stock of goods, he would not object such reduction. This court can exercise proper discretion in the light and nature of the irregularities found by the checking squad. Mr. Gharania also conceded that on one occasion, almost in same set of circumstances, 20% of the stock was ordered to be confiscated by the respondents.

Looking to the dispute between the parties vis-a-vis the decision relied upon by Mr. Jani during the course of his submissions, submission of Mr. Gharania is not only logical, but also legal. Though this is a case of second default, with the hope that company will improve in its dealing and the manner of dealing, figure of confiscation of goods can be reduced to 20% instead of 30% as ordered. This would avoid multiplicity of proceedings and, therefore, the Court should exercise its discretion in such cases when it exercises equitable jurisdiction.

Ld. AGP Mr. Gharania has submitted that in the event of reduction in percentage of confiscated stock of goods to the tune of 10%, the petitioner company should be directed to deposit the amount within a reasonable time. This submission of Mr. Gharania is just and requires to be accepted because the value of confiscated goods cannot be retained by the company as the company has not tendered any bank guarantee. If the bank guarantee is tendered to the concerned Collector, the same can be encashed after depositing the amount to the tune of 20% of the entire stock amount. According to SCN Annex.A and order Annex.B, confiscated goods are worth Rs.8,33,232/-. So, the petitioner shall have to pay 20% of the said amount which would come to Rs.1,66,646-40 ps. Mr. Jani declares that the petitioner is a Ltd. Company and payment is not the problem. Thus, he impliedly undertakes on behalf of the petitioner company that if amount is reduced to the extent of 20%, the dispute between the parties can be resolved and, therefore, this court may pass orders accordingly.

In the result, petition is partly allowed. The

impugned orders of the respondents concerned directing confiscation of goods to the extent of 30% is hereby reduced and modified to the extent of 20%, which would in terms of money come to Rs. 1,66,646-40 ps. The petitioner company is directed to make payment of the aforesaid amount of Rs. 1,66,646-40 ps. to the respondents -State within a period of 8 (eight) weeks from the date of this order failing which the petitioner will be liable to pay interest at the rate of 24% p.a. from the date of expiry of 8 weeks till the realisation of the said amount and in that event said amount shall be recovered as State Revenue from the petitioner.

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